

216503

STATE OF SOUTH CAROLINA

(Caption of Case)

IN THE MATTER OF COMPLAINT OF SPRINT
COMMUNICATIONS COMPANY L.P. AGAINST
PBT TELECOM, INC.BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET
NUMBER: 2008 - 389 - C

(Please type or print)

Submitted by: John J. Pringle, Jr.

SC Bar Number: 11208

Telephone: 803-343-1270

Fax: 803-799-8479

Address: Ellis, Lawhorne & Sims, PA

PO Box 2285

Columbia SC 29202

Other:

Email: jpringle@ellislawhorne.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition☒ Request for item to be placed on Commission's Agenda
expeditiously☐ Other:

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)			
<input type="checkbox"/> Electric	<input type="checkbox"/> Affidavit	<input checked="" type="checkbox"/> Letter	<input type="checkbox"/> Request	
<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certification	
<input type="checkbox"/> Electric/Telecommunications	<input type="checkbox"/> Answer	<input type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigation	
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement	
<input type="checkbox"/> Electric/Water/Telecom.	<input type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment	
<input type="checkbox"/> Electric/Water/Sewer	<input type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter	
<input type="checkbox"/> Gas	<input type="checkbox"/> Certificate	<input type="checkbox"/> Petition for Rulemaking	<input type="checkbox"/> Response	
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discovery	
<input type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition	
<input checked="" type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation	
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input type="checkbox"/> Prefiled Testimony	<input type="checkbox"/> Subpoena	
<input type="checkbox"/> Water	<input type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff	
<input type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input type="checkbox"/> Proposed Order	<input type="checkbox"/> Other: _____	
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest		
<input type="checkbox"/> Other: _____	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit		
	<input type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report		

Print Form

Reset Form

RECEIVED
FCC
MAIL/DMS

ELLIS:LAWHORNE

John J. Pringle, Jr.
Direct dial: 803/343-1270
jpringle@ellislawhorne.com

April 27, 2009

FILED ELECTRONICALLY

The Honorable Charles L.A. Terreni
Chief Clerk
South Carolina Public Service Commission
Post Office Drawer 11649
Columbia, South Carolina 29211

RE: In the Matter of Complaint of Sprint Communications Company L.P.
Against PBT Telecom, Inc.
Docket No. 2008-389-C, ELS File No. 1395-11589

Dear Mr. Terreni:

Please allow this letter to serve as the reply of Sprint Communications Company, L.P. ("Sprint") to PBT Telecom, Inc.'s ("PBT") Response to Sprint's Motion for Summary Judgment.

In response to Sprint's formal complaint filed in this Docket, PBT attempted to justify its seven-month intransigence in implementing the parties' executed Interconnection Agreement ("ICA") with one defense: that Sprint had failed to follow the provisions of the ICA. Specifically, PBT claimed that the ICA required Sprint to submit an access service request ("ASR") to PBT, and that Sprint's failure to do so demonstrated that PBT owed no obligation to Sprint under the ICA. PBT styled this defense as "failure to state a claim upon which relief may be granted." PBT Answer at Paragraph 14.

As the Commission is aware, a claim that a complaint fails to state a claim upon which relief may be granted is a motion under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. The question for the Commission on a Rule 12(b)(6) Motion is whether in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the allegations set forth on the face of the complaint state any valid claim for relief. Plyler v. Burns, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). Therefore, according to PBT's Answer, even if every fact alleged by Sprint in the Complaint is true, Sprint would not be entitled to the relief it seeks.

Sprint's Motion for Summary judgment, then, merely requested that the Commission consider and rule on the essence of PBT's own claim—that the language of the ICA rendered unnecessary any factual development in this Docket.

The Honorable Charles L.A. Terreni
April 27, 2009
Page 2

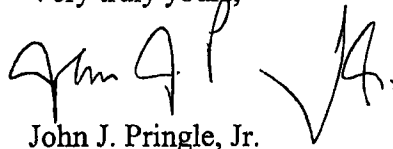
However, PBT contradicts its Answer by claiming in its Response that "there is a disputed fact as to what is required to effectuate implementation of the Interconnection Agreement at issue." Response at Page 1. PBT can't have it both ways. Either PBT is mistaken about whether the parties have a material factual dispute (in which case there is a set of facts that would entitle Sprint to relief), or its claim that Sprint has failed to state a claim upon which relief can be granted is ready to be heard by the Commission (in which case PBT has no valid objection to it being heard).

PBT has mischaracterized the dispute between the parties. The question of "what is required to effectuate the Interconnection Agreement" is not a question of fact but rather purely a question of law. HK New Plan Exchange Property Owner v. Coker, 375 S.C. 18, 22, 649 S.E.2d 181, 184 (Ct. App. 2004) ("Generally the construction of a contract is a question of law for the court."). Based upon PBT's own Answer, the parties have asked the Commission to determine what the ICA requires and what it means. Therefore, this matter is particularly appropriate for the Commission to hear via summary judgment. Id. ("Where a motion for summary judgment presents a question as to the construction of a written contract, if the language employed by the agreement is plain and unambiguous, the question is one of law.")

Moreover, Sprint merely requested that the Commission set the Motion for argument--not issue a ruling--at this time. Sprint reiterates its request that the Commission do so. The discussions between the parties cited by PBT underscore rather than obviate the need for such an argument to be scheduled. Indeed, the recent discussions between the parties appear to have only taken place because Sprint brought this issue to the Commission's attention. Scheduling oral argument in this matter should hopefully facilitate further discussion, not inhibit it.

By copy of this letter, I am serving all parties of record and enclose my Certificate of Service to that effect. If you have any questions or need additional information, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "John J. Pringle, Jr.", with a large checkmark-like flourish to the right.

John J. Pringle, Jr.

JJP/cr

cc: Nannette S. Edwards, Esquire (via electronic and first-class mail service)
William R. Atkinson, Esquire (via electronic and first-class mail service)
all parties of record

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
Docket No. 2008-389-C**

IN THE MATTER OF COMPLAINT OF SPRINT COMMUNICATIONS COMPANY L.P. AGAINST PBT TELECOM, INC.	CERTIFICATE OF SERVICE
--	-------------------------------

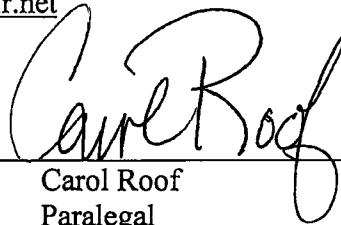
This is to certify that I have caused to be served this day, one (1) copy of **Sprint's Reply to the Response of PBT Telecom to Sprint's Motion for Summary Judgment** by placing a copy of same in the care and custody of the United States Postal Service (unless otherwise specified), with proper first-class postage affixed hereto and addressed as follows:

VIA ELECTRONIC AND FIRST-CLASS MAIL SERVICE

Nannette S. Edwards, Esquire
General Counsel
Office of Regulatory Staff
Legal Department
PO Box 11263
Columbia SC 29211
nsedwar@regstaff.sc.gov

VIA ELECTRONIC AND FIRST-CLASS MAIL SERVICE

M. John Bowen, Jr., Esquire
Margaret M. Fox, Esquire
McNair Law Firm, PA
PO Box 11390
Columbia SC 29211
jbowen@mcnair.net
pfox@mcnair.net



Carol Roof
Paralegal

April 27, 2009
Columbia, South Carolina